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By Representatives Ericksen, Dunn, Newhouse, Ahern, Hinkle, Kretz, Warnick, Crouse, Hailey, Schindler, Pearson, Haler, Kristiansen, Strow, Chandler and Bailey

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1 AN ACT Relating to the right to farm; amending RCW 64.06.022,
2 70.94.640, 90.48.080, 36.70A.030, 36.70A.175, and 90.48.020; reenacting
3 and amending RCW 7.48.305; adding a new section to chapter 90.48 RCW;
4 adding a new section to chapter 90.64 RCW; adding a new chapter to
5 Title 15 RCW; recodifying RCW 7.48.305, 7.48.315, 7.48.320, and
6 7.48.905; and repealing RCW 7.48.300, 7.48.310, and 90.48.450.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 PART I

9 RIGHT TO FARM

10 NEW SECTION. **Sec. 101.** This chapter may be known and cited as the
11 Washington right to farm act.

12 NEW SECTION. **Sec. 102.** The legislature finds that the state's
13 agricultural industry is diversified, productive, and a major
14 contributor to the Washington economy. Urban and rural communities
15 statewide benefit from the direct and indirect jobs, income, and
16 revenues generated by agricultural production. Agricultural land is
17 essential to providing citizens with food and fiber and to ensuring

1 aesthetic values through the preservation of open spaces. However, the
2 legislature also finds that excessive government regulation can cause
3 agricultural land to be converted to nonagricultural uses, and that
4 inconsistencies between federal and state regulations can cause
5 confusion for those persons affected. In addition, agricultural
6 activities conducted on farmland are often subjected to nuisance
7 lawsuits that encourage and even force the premature removal of the
8 lands from agricultural uses. The legislature further finds that for
9 the agricultural industry to survive, farms must be able to adopt new
10 technologies and to diversify into new products. The legislature
11 intends with this chapter that agricultural activities conducted on
12 farmland that are consistent with good agricultural practices will be
13 protected from excessive, inconsistent regulation by government and
14 from nuisance lawsuits.

15 NEW SECTION. **Sec. 103.** The definitions in this section apply
16 throughout this chapter unless the context clearly requires otherwise.

17 (1) "Agricultural activity" means the growing, raising, or
18 production of horticultural or viticultural crops, berries, poultry,
19 livestock, shellfish, grain, mint, hay, and dairy products, and
20 conditions or activities that occur on a farm in connection with the
21 commercial production of farm products, including but not limited to:
22 Marketed produce at roadside stands or farm markets; noise; odors;
23 dust; fumes; operation of machinery and irrigation pumps; movement
24 including, but not limited to, use of current county road ditches,
25 streams, rivers, canals, and drains, and use of water for agricultural
26 activities; ground and aerial application of seed, fertilizers,
27 conditioners, and plant protection products; employment and use of
28 labor; roadway movement of equipment and livestock; protection from
29 damage by wildlife; prevention of trespass; construction and
30 maintenance of buildings, fences, roads, bridges, ponds, drains,
31 waterways, and similar features and maintenance of streambanks and
32 watercourses; and conversion from one agricultural activity to another.

33 (2) "Agricultural storm water" or "storm water runoff" means any
34 precipitation-related discharge of manure, litter, or process
35 wastewater from land areas where the manure, litter, or process
36 wastewater has been applied in accordance with site-specific nutrient

1 management practices that ensure appropriate agricultural utilization
2 of nutrients.

3 (3) "Farm" means the land, buildings, freshwater ponds, freshwater
4 culturing and growing facilities, and machinery used in the commercial
5 production of farm products.

6 (4) "Farm product" means those plants and animals useful to humans
7 and includes, but is not limited to, forages and sod crops, dairy and
8 dairy products, poultry and poultry products, livestock including
9 breeding, grazing, and recreational equine use, fruits, vegetables,
10 flowers, seeds, grasses, trees, freshwater fish and fish products,
11 apiaries, equine and other similar products, or any other product that
12 incorporates the use of food, feed, fiber, or fur.

13 (5) "Farmland" means land or freshwater ponds devoted primarily to
14 the production, for commercial purposes, of livestock, freshwater
15 aquacultural, or other agricultural commodities.

16 (6) "Forest practice" has the same meaning as in RCW 76.09.020.

17 (7) "Fugitive dust" means a particulate emission made airborne by
18 human activity, forces of wind, or both, that do not pass through a
19 stack, chimney, vent, or other functionally equivalent opening.

20 (8) "Good agricultural practices" means economically feasible
21 practices which are customary among or appropriate to farms and ranches
22 of a similar nature in the local area.

23 **Sec. 104.** RCW 7.48.305 and 1992 c 151 s 1 and 1992 c 52 s 3 are
24 each reenacted and amended to read as follows:

25 (~~Notwithstanding any other provision of this chapter,~~) (1)
26 Agricultural activities conducted on farmland and forest practices, if
27 consistent with good agricultural and forest practices (~~and~~
28 ~~established prior to surrounding nonagricultural and nonforestry~~
29 ~~activities~~)), are presumed to be reasonable and shall not be found to
30 constitute a nuisance unless the activity has a substantial adverse
31 effect on the public health and safety.

32 (2) If those agricultural activities and forest practices are
33 undertaken in conformity with all applicable laws and rules, the
34 activities are presumed to be good agricultural and forest practices
35 not adversely affecting the public health and safety for purposes of
36 this (~~section and RCW 7.48.300~~) chapter. An agricultural activity

1 that is in conformity with such laws and rules shall not be restricted
2 as to the hours of the day or day or days of the week during which it
3 may be conducted.

4 (3) Nothing in this section shall affect or impair any right to sue
5 for damages.

6 NEW SECTION. **Sec. 105.** (1) Odors or fugitive dust caused by
7 agricultural activity consistent with good agricultural practices on
8 agricultural land are exempt from the requirements of chapter 70.94 RCW
9 unless they have a substantial adverse effect on public health. In
10 determining whether agricultural activity is consistent with good
11 agricultural practices, the department of ecology or board of any
12 authority shall consult with a recognized third-party expert in the
13 activity prior to issuing any notice of violation.

14 (2) Any notice of violation issued under chapter 70.94 RCW
15 pertaining to odors or fugitive dust caused by agricultural activity
16 shall include a statement as to why the activity is inconsistent with
17 good agricultural practices, or a statement that the odors or fugitive
18 dust have substantial adverse effect on public health.

19 (3) In any appeal to the pollution control hearings board or any
20 judicial appeal, the agency issuing a final order pertaining to odors
21 or fugitive dust caused by agricultural activity shall prove the
22 activity is inconsistent with good agricultural practices or that the
23 odors or fugitive dust have a substantial adverse impact on public
24 health.

25 (4) The exemption in this section does not apply:

26 (a) If a person engaged in agricultural activity on a contiguous
27 piece of agricultural land sells or has sold a portion of that land for
28 residential purposes;

29 (b) To facilities subject to RCW 70.94.151 as specified in WAC 173-
30 400-100 as of July 24, 2005, 70.94.152, or 70.94.161.

31 (5) As used in this section, "agricultural land" means at least
32 five acres of land devoted primarily to the commercial production of
33 livestock, agricultural commodities, or cultured aquatic products.

34 NEW SECTION. **Sec. 106.** A seller of real property, as defined in
35 chapter 64.06 RCW, shall make available to the buyer the following
36 statement: "This notice is to inform you that the real property you

1 are considering for purchase may lie in close proximity to a farm. The
2 operation of a farm involves usual and customary agricultural
3 practices, which are protected under chapter 15.-- RCW (sections 101
4 through 103, 105 through 110, and 301 of this act), the Washington
5 right to farm act."

6 NEW SECTION. **Sec. 107.** Organic matter or inorganic matter
7 discharged into any waters of the state as a result of an agricultural
8 activity is exempt from the prohibition in RCW 90.48.080.

9 NEW SECTION. **Sec. 108.** No permit system pertaining to sources of
10 pollution arising from agricultural storm water may be authorized and
11 no civil or criminal penalties may be imposed with respect to any
12 agricultural activities conducted in full compliance with the
13 applicable provisions of chapters 90.64 and 90.48 RCW, any rules
14 adopted thereunder, and any applicable approvals or directives of the
15 department of ecology.

16 NEW SECTION. **Sec. 109.** The definitions of "wetland" or "wetlands"
17 in RCW 36.70A.030(21) and 36.70A.175 do not include wetlands converted
18 to agricultural use before December 23, 1985, in accordance with the
19 federal food security act of 1985 (99 Stat. 1354), unless they are
20 converted to a nonagricultural use, at which time they are subject to
21 a new delineation and the provisions of chapter 36.70A RCW.

22 NEW SECTION. **Sec. 110.** The definition of "waters of the state" in
23 RCW 90.48.020 may not be construed to include wetlands converted to
24 agricultural use before December 23, 1985, in accordance with the
25 federal food security act of 1985 (99 Stat. 1354), unless they are
26 converted to a nonagricultural use, at which time they are subject to
27 a new delineation and the provisions of chapter 90.48 RCW.

28 NEW SECTION. **Sec. 111.** The following acts or parts of acts are
29 each repealed:

30 (1) RCW 7.48.300 (Agricultural activities and forest practices--
31 Legislative finding and purpose) and 1992 c 52 s 2 & 1979 c 122 s 1;

32 (2) RCW 7.48.310 (Agricultural activities and forest practices--
33 Definitions) and 1992 c 52 s 4, 1991 c 317 s 2, & 1979 c 122 s 3; and

1 (3) RCW 90.48.450 (Discharges from agricultural activity--
2 Consideration to be given as to whether enforcement action would
3 contribute to conversion of land to nonagricultural use--Minimize the
4 possibility) and 1981 c 297 s 31.

5 **PART II**
6 **TECHNICAL AMENDMENTS**

7 **Sec. 201.** RCW 64.06.022 and 2006 c 77 s 1 are each amended to read
8 as follows:

9 A seller of real property shall make available to the buyer the
10 ((following)) statement(~~(:—"This notice is to inform you that the real~~
11 ~~property you are considering for purchase may lie in close proximity to~~
12 ~~a farm. The operation of a farm involves usual and customary~~
13 ~~agricultural practices, which are protected under RCW 7.48.305, the~~
14 ~~Washington right to farm act."~~)) required in section 106 of this act.

15 **Sec. 202.** RCW 70.94.640 and 2005 c 511 s 4 are each amended to
16 read as follows:

17 ((~~1~~)) As provided in section 105 of this act, odors or fugitive
18 dust caused by agricultural activity ((consistent with good
19 agricultural practices on agricultural land)) are exempt from the
20 requirements of this chapter ((unless they have a substantial adverse
21 effect on public health. In determining whether agricultural activity
22 is consistent with good agricultural practices, the department of
23 ecology or board of any authority shall consult with a recognized
24 third party expert in the activity prior to issuing any notice of
25 violation.

26 ~~(2) Any notice of violation issued under this chapter pertaining to~~
27 ~~odors or fugitive dust caused by agricultural activity shall include a~~
28 ~~statement as to why the activity is inconsistent with good agricultural~~
29 ~~practices, or a statement that the odors or fugitive dust have~~
30 ~~substantial adverse effect on public health.~~

31 ~~(3) In any appeal to the pollution control hearings board or any~~
32 ~~judicial appeal, the agency issuing a final order pertaining to odors~~
33 ~~or fugitive dust caused by agricultural activity shall prove the~~
34 ~~activity is inconsistent with good agricultural practices or that the~~

1 odors or fugitive dust have a substantial adverse impact on public
2 health.

3 ~~(4) If a person engaged in agricultural activity on a contiguous~~
4 ~~piece of agricultural land sells or has sold a portion of that land for~~
5 ~~residential purposes, the exemption of this section shall not apply.~~

6 ~~(5) As used in this section:~~

7 ~~(a) "Agricultural activity" means the growing, raising, or~~
8 ~~production of horticultural or viticultural crops, berries, poultry,~~
9 ~~livestock, shellfish, grain, mint, hay, and dairy products.~~

10 ~~(b) "Good agricultural practices" means economically feasible~~
11 ~~practices which are customary among or appropriate to farms and ranches~~
12 ~~of a similar nature in the local area.~~

13 ~~(c) "Agricultural land" means at least five acres of land devoted~~
14 ~~primarily to the commercial production of livestock, agricultural~~
15 ~~commodities, or cultured aquatic products.~~

16 ~~(d) "Fugitive dust" means a particulate emission made airborne by~~
17 ~~human activity, forces of wind, or both, and which do not pass through~~
18 ~~a stack, chimney, vent, or other functionally equivalent opening.~~

19 ~~(6) The exemption for fugitive dust provided in subsection (1) of~~
20 ~~this section does not apply to facilities subject to RCW 70.94.151 as~~
21 ~~specified in WAC 173-400-100 as of July 24, 2005, 70.94.152, or~~
22 ~~70.94.161)).~~

23 **Sec. 203.** RCW 90.48.080 and 1987 c 109 s 126 are each amended to
24 read as follows:

25 Except as provided in section 107 of this act, it shall be unlawful
26 for any person to throw, drain, run, or otherwise discharge into any of
27 the waters of this state, or to cause, permit or suffer to be thrown,
28 run, drained, allowed to seep or otherwise discharged into such waters
29 any organic or inorganic matter that shall cause or tend to cause
30 pollution of such waters according to the determination of the
31 department, as provided for in this chapter.

32 **Sec. 204.** RCW 36.70A.030 and 2005 c 423 s 2 are each amended to
33 read as follows:

34 Unless the context clearly requires otherwise, the definitions in
35 this section apply throughout this chapter.

1 (1) "Adopt a comprehensive land use plan" means to enact a new
2 comprehensive land use plan or to update an existing comprehensive land
3 use plan.

4 (2) "Agricultural land" means land primarily devoted to the
5 commercial production of horticultural, viticultural, floricultural,
6 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
7 straw, turf, seed, Christmas trees not subject to the excise tax
8 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
9 hatcheries, or livestock, and that has long-term commercial
10 significance for agricultural production.

11 (3) "City" means any city or town, including a code city.

12 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
13 means a generalized coordinated land use policy statement of the
14 governing body of a county or city that is adopted pursuant to this
15 chapter.

16 (5) "Critical areas" include the following areas and ecosystems:
17 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
18 used for potable water; (c) fish and wildlife habitat conservation
19 areas; (d) frequently flooded areas; and (e) geologically hazardous
20 areas.

21 (6) "Department" means the department of community, trade, and
22 economic development.

23 (7) "Development regulations" or "regulation" means the controls
24 placed on development or land use activities by a county or city,
25 including, but not limited to, zoning ordinances, critical areas
26 ordinances, shoreline master programs, official controls, planned unit
27 development ordinances, subdivision ordinances, and binding site plan
28 ordinances together with any amendments thereto. A development
29 regulation does not include a decision to approve a project permit
30 application, as defined in RCW 36.70B.020, even though the decision may
31 be expressed in a resolution or ordinance of the legislative body of
32 the county or city.

33 (8) "Forest land" means land primarily devoted to growing trees for
34 long-term commercial timber production on land that can be economically
35 and practically managed for such production, including Christmas trees
36 subject to the excise tax imposed under RCW 84.33.100 through
37 84.33.140, and that has long-term commercial significance. In
38 determining whether forest land is primarily devoted to growing trees

1 for long-term commercial timber production on land that can be
2 economically and practically managed for such production, the following
3 factors shall be considered: (a) The proximity of the land to urban,
4 suburban, and rural settlements; (b) surrounding parcel size and the
5 compatibility and intensity of adjacent and nearby land uses; (c) long-
6 term local economic conditions that affect the ability to manage for
7 timber production; and (d) the availability of public facilities and
8 services conducive to conversion of forest land to other uses.

9 (9) "Geologically hazardous areas" means areas that because of
10 their susceptibility to erosion, sliding, earthquake, or other
11 geological events, are not suited to the siting of commercial,
12 residential, or industrial development consistent with public health or
13 safety concerns.

14 (10) "Long-term commercial significance" includes the growing
15 capacity, productivity, and soil composition of the land for long-term
16 commercial production, in consideration with the land's proximity to
17 population areas, and the possibility of more intense uses of the land.

18 (11) "Minerals" include gravel, sand, and valuable metallic
19 substances.

20 (12) "Public facilities" include streets, roads, highways,
21 sidewalks, street and road lighting systems, traffic signals, domestic
22 water systems, storm and sanitary sewer systems, parks and recreational
23 facilities, and schools.

24 (13) "Public services" include fire protection and suppression, law
25 enforcement, public health, education, recreation, environmental
26 protection, and other governmental services.

27 (14) "Recreational land" means land so designated under RCW
28 36.70A.1701 and that, immediately prior to this designation, was
29 designated as agricultural land of long-term commercial significance
30 under RCW 36.70A.170. Recreational land must have playing fields and
31 supporting facilities existing before July 1, 2004, for sports played
32 on grass playing fields.

33 (15) "Rural character" refers to the patterns of land use and
34 development established by a county in the rural element of its
35 comprehensive plan:

36 (a) In which open space, the natural landscape, and vegetation
37 predominate over the built environment;

1 (b) That foster traditional rural lifestyles, rural-based
2 economies, and opportunities to both live and work in rural areas;

3 (c) That provide visual landscapes that are traditionally found in
4 rural areas and communities;

5 (d) That are compatible with the use of the land by wildlife and
6 for fish and wildlife habitat;

7 (e) That reduce the inappropriate conversion of undeveloped land
8 into sprawling, low-density development;

9 (f) That generally do not require the extension of urban
10 governmental services; and

11 (g) That are consistent with the protection of natural surface
12 water flows and ground water and surface water recharge and discharge
13 areas.

14 (16) "Rural development" refers to development outside the urban
15 growth area and outside agricultural, forest, and mineral resource
16 lands designated pursuant to RCW 36.70A.170. Rural development can
17 consist of a variety of uses and residential densities, including
18 clustered residential development, at levels that are consistent with
19 the preservation of rural character and the requirements of the rural
20 element. Rural development does not refer to agriculture or forestry
21 activities that may be conducted in rural areas.

22 (17) "Rural governmental services" or "rural services" include
23 those public services and public facilities historically and typically
24 delivered at an intensity usually found in rural areas, and may include
25 domestic water systems, fire and police protection services,
26 transportation and public transit services, and other public utilities
27 associated with rural development and normally not associated with
28 urban areas. Rural services do not include storm or sanitary sewers,
29 except as otherwise authorized by RCW 36.70A.110(4).

30 (18) "Urban growth" refers to growth that makes intensive use of
31 land for the location of buildings, structures, and impermeable
32 surfaces to such a degree as to be incompatible with the primary use of
33 land for the production of food, other agricultural products, or fiber,
34 or the extraction of mineral resources, rural uses, rural development,
35 and natural resource lands designated pursuant to RCW 36.70A.170. A
36 pattern of more intensive rural development, as provided in RCW
37 36.70A.070(5)(d), is not urban growth. When allowed to spread over
38 wide areas, urban growth typically requires urban governmental

1 services. "Characterized by urban growth" refers to land having urban
2 growth located on it, or to land located in relationship to an area
3 with urban growth on it as to be appropriate for urban growth.

4 (19) "Urban growth areas" means those areas designated by a county
5 pursuant to RCW 36.70A.110.

6 (20) "Urban governmental services" or "urban services" include
7 those public services and public facilities at an intensity
8 historically and typically provided in cities, specifically including
9 storm and sanitary sewer systems, domestic water systems, street
10 cleaning services, fire and police protection services, public transit
11 services, and other public utilities associated with urban areas and
12 normally not associated with rural areas.

13 (21) "Wetland" or "wetlands" means areas that are inundated or
14 saturated by surface water or ground water at a frequency and duration
15 sufficient to support, and that under normal circumstances do support,
16 a prevalence of vegetation typically adapted for life in saturated soil
17 conditions. Wetlands generally include swamps, marshes, bogs, and
18 similar areas. Wetlands do not include those artificial wetlands
19 intentionally created from nonwetland sites((~~τ~~)) including, but not
20 limited to((~~τ~~)): Irrigation and drainage ditches((~~τ~~)); grass-lined
21 swales((~~τ~~)); canals((~~τ~~)); detention facilities((~~τ~~)); wastewater
22 treatment facilities((~~τ~~)); farm ponds((~~τ~~)); wetlands converted to
23 agricultural use, as provided in section 109 of this act; and landscape
24 amenities, or those wetlands created after July 1, 1990, that were
25 unintentionally created as a result of the construction of a road,
26 street, or highway. Wetlands may include those artificial wetlands
27 intentionally created from nonwetland areas created to mitigate
28 conversion of wetlands.

29 **Sec. 205.** RCW 36.70A.175 and 1995 c 382 s 12 are each amended to
30 read as follows:

31 Wetlands regulated under development regulations adopted pursuant
32 to this chapter shall be delineated in accordance with the manual
33 adopted by the department pursuant to RCW 90.58.380, except wetlands
34 converted to agricultural use, as provided in section 109 of this act.

35 **Sec. 206.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to
36 read as follows:

1 (1) Whenever the word "person" is used in this chapter, it shall be
2 construed to include any political subdivision, government agency,
3 municipality, industry, public or private corporation, copartnership,
4 association, firm, individual or any other entity whatsoever.

5 (2) Wherever the words "waters of the state" shall be used in this
6 chapter, they shall be construed to include lakes, rivers, ponds,
7 streams, inland waters, underground waters, salt waters and all other
8 surface waters and watercourses within the jurisdiction of the state of
9 Washington, but shall not be construed to include wetlands converted to
10 agricultural use, as provided in section 110 of this act.

11 (3) Whenever the word "pollution" is used in this chapter, it shall
12 be construed to mean such contamination, or other alteration of the
13 physical, chemical or biological properties, of any waters of the
14 state, including change in temperature, taste, color, turbidity, or
15 odor of the waters, or such discharge of any liquid, gaseous, solid,
16 radioactive, or other substance into any waters of the state as will or
17 is likely to create a nuisance or render such waters harmful,
18 detrimental or injurious to the public health, safety or welfare, or to
19 domestic, commercial, industrial, agricultural, recreational, or other
20 legitimate beneficial uses, or to livestock, wild animals, birds, fish
21 or other aquatic life.

22 (4) Wherever the word "department" is used in this chapter it shall
23 mean the department of ecology.

24 (5) Whenever the word "director" is used in this chapter it shall
25 mean the director of ecology.

26 (6) Whenever the words "aquatic noxious weed" are used in this
27 chapter, they have the meaning prescribed under RCW 17.26.020.

28 (7) Whenever the words "general sewer plan" are used in this
29 chapter they shall be construed to include all sewerage general plans,
30 sewer general comprehensive plans, plans for a system of sewerage, and
31 other plans for sewer systems adopted by a local government entity
32 including but not limited to cities, towns, public utility districts,
33 and water-sewer districts.

34 (8) Whenever the words "agricultural storm water" or "storm water
35 runoff" are used in this chapter they shall have the same meaning as
36 that contained in section 103(2) of this act.

